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2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4

5 WILLIAM BENTON HENRY, an  
6 individual,

7 Plaintiff,

8 vs.

9 AIRBNB, INC., a Delaware corporation,  
10 individually, and doing business as  
11 "AIRBNB.COM," et al.,

12 Defendant.  
13

Case No. 2:23-cv-03008-GW(ASx)

**PROTECTIVE ORDER**

14 1. A. PURPOSES AND LIMITATIONS

15 Airbnb, Inc. ("Airbnb") was voluntarily dismissed from this action without  
16 prejudice on July 13, 2023. Plaintiff William Benton Henry subsequently filed a  
17 Notice of Dismissal with Prejudice as to Airbnb on September 7, 2023. In the  
18 intervening period, Plaintiff served Airbnb, which had become a non-party, with a  
19 Rule 45 Subpoena to Testify at a Deposition with Requests for Production attached  
20 thereto ("Subpoena"). Without waiver of its objections to this Subpoena, which  
21 Airbnb contends is substantively and procedurally defective, Airbnb's anticipated  
22 production in response to certain of the Requests for Production is likely to involve  
23 production of confidential, proprietary, or private information for which special  
24 protection from public disclosure and from use for any purpose other than  
25 prosecuting this litigation may be warranted. Accordingly, Plaintiff and Airbnb  
26 hereby stipulate to and petition the Court to enter the following Stipulated  
27 Protective Order. Plaintiff and Airbnb acknowledge that this Order does not confer  
28 blanket protections on all disclosures or responses to discovery and that the

1 protection it affords from public disclosure and use extends only to the limited  
2 information or items that are entitled to confidential treatment under the applicable  
3 legal principles.

4 B. GOOD CAUSE STATEMENT

5 Airbnb's production in this action is likely to involve confidential and  
6 proprietary materials and information for which special protection from public  
7 disclosure and from use for any purpose other than prosecution of this action is  
8 warranted. Such confidential and proprietary materials and information consist of,  
9 among other things, confidential business or financial information, information  
10 regarding confidential business practices, or other confidential research,  
11 development, or commercial information (including information implicating  
12 privacy rights of third parties), information otherwise generally unavailable to the  
13 public, or which may be privileged or otherwise protected from disclosure under  
14 state or federal statutes, court rules, case decisions, or common law. Accordingly, to  
15 expedite the flow of information, to facilitate the prompt resolution of disputes over  
16 confidentiality of discovery materials, to adequately protect information Airbnb is  
17 entitled to keep confidential, to ensure that Plaintiff is permitted reasonable  
18 necessary uses of such material in preparation for and in the conduct of trial, to  
19 address the handling of such material at the end of the litigation, and to serve the  
20 ends of justice, a protective order for such information is justified in this matter. It  
21 is the intent of Plaintiff and Airbnb that information will not be designated as  
22 confidential for tactical reasons and that nothing be so designated without a good  
23 faith belief that it has been maintained in a confidential, non-public manner, and  
24 there is good cause why it should not be part of the public record of this case.

25 2. DEFINITIONS

26 2.1 Action: this pending federal lawsuit.

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
28 of information or items under this Order.

- 1           2.3    “AIRBNB CONFIDENTIAL” Information or Items: Airbnb-produced  
2           information (regardless of how it is generated, stored or maintained) or  
3           tangible things that qualify for protection under Federal Rule of Civil  
4           Procedure 26(c), and as specified above in the Good Cause Statement.
- 5           2.4    Counsel: Outside Counsel of Record and House Counsel and/or Counsel  
6           for Airbnb (as well as their support staff).
- 7           2.5    Disclosure or Discovery Material: all items or information, regardless of  
8           the medium or manner in which it is generated, stored, or maintained  
9           (including, among other things, testimony, transcripts, and tangible  
10          things), that are produced or generated in disclosures or responses to  
11          discovery in this matter.
- 12          2.6    House Counsel: attorneys who are employees of a party to this Action.  
13          House Counsel does not include Outside Counsel of Record or any other  
14          outside counsel.
- 15          2.7    Non-Party: any natural person, partnership, corporation, association, or  
16          other legal entity not named as a Party to this action.
- 17          2.8    Outside Counsel of Record: attorneys who are not employees of a party  
18          to this Action but are retained to represent or advise a party to this  
19          Action and have appeared in this Action on behalf of that party or are  
20          affiliated with a law firm which has appeared on behalf of that party,  
21          including their support staff.
- 22          2.9    Party: any party to this Action, including all of its officers, directors,  
23          employees, consultants, retained experts, and Outside Counsel of  
24          Record, including their support staff.
- 25          2.10   Protected Material: any Disclosure or Discovery Material that is  
26          designated as “AIRBNB CONFIDENTIAL.”
- 27          2.11   Receiving Party: a Party that receives Disclosure or Discovery Material  
28          from Airbnb.

1     3.   SCOPE

2           The protections conferred by this Stipulation and Order cover not only  
3     Protected Material (as defined above), but also (1) any information copied or  
4     extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5     compilations of Protected Material; and (3) any testimony, conversations, or  
6     presentations by Parties or their Counsel that might reveal Protected Material.

7           Any use of Protected Material at trial shall be governed by the orders of the  
8     trial judge. This Order does not govern the use of Protected Material at trial.

9     4.   DURATION

10          Even after final disposition of this litigation, the confidentiality obligations  
11     imposed by this Order shall remain in effect until Airbnb agrees otherwise in  
12     writing or a court order otherwise directs. Final disposition shall be deemed to be  
13     the later of (1) dismissal of all claims and defenses in this Action, with or without  
14     prejudice; and (2) final judgment herein after the completion and exhaustion of all  
15     appeals, rehearings, remands, trials, or reviews of this Action, including the time  
16     limits for filing any motions or applications for extension of time pursuant to  
17     applicable law.

18    5.   DESIGNATING PROTECTED MATERIAL

19          5.1   Exercise of Restraint and Care in Designating Material for Protection.  
20     Each Party or Non-Party that designates information or items for protection under  
21     this Order must take care to limit any such designation to specific material that  
22     qualifies under the appropriate standards. Airbnb will designate for protection only  
23     those parts of material, documents, items, or oral or written communications that  
24     qualify so that other portions of the material, documents, items, or communications  
25     for which protection is not warranted are not swept unjustifiably within the ambit of  
26     this Order.

27          Mass, indiscriminate, or routinized designations are prohibited. Designations  
28     that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber the case development process or to  
2 impose unnecessary expenses and burdens on other parties) may expose Airbnb to  
3 sanctions.

4 If it comes to Airbnb's attention that information or items that it designated  
5 for protection do not qualify for protection, Airbnb must promptly notify the parties  
6 that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in  
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
10 under this Order must be clearly so designated before the material is disclosed or  
11 produced.

12 Designation in conformity with this Order requires:

- 13 (a) for information in documentary form (e.g., paper or electronic  
14 documents, but excluding transcripts of depositions or other pretrial or  
15 trial proceedings), that Airbnb affix at a minimum, the legend  
16 "CONFIDENTIAL" or "AIRBNB CONFIDENTIAL" (hereinafter  
17 "AIRBNB CONFIDENTIAL legend"), to each page that contains  
18 protected material. If only a portion or portions of the material on a  
19 page qualifies for protection, Airbnb also must clearly identify the  
20 protected portion(s) (e.g., by making appropriate markings in the  
21 margins).

22 In the event Airbnb makes original documents available for inspection, it  
23 need not designate them for protection until after the inspecting Party has indicated  
24 which documents it would like copied and produced. During the inspection and  
25 before the designation, all of the material made available for inspection shall be  
26 deemed "AIRBNB CONFIDENTIAL." After the inspecting Party has identified the  
27 documents it wants copied and produced, Airbnb must determine which documents,  
28 or portions thereof, qualify for protection under this Order. Then, before producing

1 the specified documents, Airbnb must affix the “AIRBNB CONFIDENTIAL  
 2 legend” to each page that contains Protected Material. If only a portion or portions  
 3 of the material on a page qualifies for protection, Airbnb also must clearly identify  
 4 the protected portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in depositions that Airbnb identify the Disclosure  
 6 or Discovery Material within 30 days of the deposition all protected  
 7 testimony.

8 (c) for information produced in some form other than documentary and  
 9 for any other tangible items, that Airbnb affix in a prominent place on  
 10 the exterior of the container or containers in which the information is  
 11 stored the legend “AIRBNB CONFIDENTIAL.” If only a portion or  
 12 portions of the information warrants protection, Airbnb, to the extent  
 13 practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 15 failure to designate qualified information or items does not, standing alone, waive  
 16 Airbnb’s right to secure protection under this Order for such material. Upon timely  
 17 correction of a designation, the Receiving Party must make reasonable efforts to  
 18 assure that the material is treated in accordance with the provisions of this Order.  
 19 However, any distribution or disclosure that occurred before such a designation will  
 20 not constitute a violation of this Order punishable pursuant to Section 13 of this  
 21 Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 24 designation of confidentiality at any time that is consistent with the Court’s  
 25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the informal  
 27 dispute resolution process set forth in the Court’s Procedures and Schedules. *See*  
 28 <http://www.cacd.uscourts.gov/honorable-alka-sagar>.

1           6.3     The burden of persuasion in any such challenge proceeding shall be on  
2 Airbnb. Frivolous challenges, and those made for an improper purpose (e.g., to  
3 harass or impose unnecessary expenses and burdens on other parties) may expose  
4 the Challenging Party to sanctions. Unless Airbnb has waived or withdrawn the  
5 confidentiality designation, all parties shall continue to afford the material in  
6 question the level of protection to which it is entitled under Airbnb's designation  
7 until the Court rules on the challenge.

8     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

9           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a Non-Party in connection with this  
11 Action only for prosecuting, defending, or attempting to settle this Action. Such  
12 Protected Material may be disclosed only to the categories of persons and under the  
13 conditions described in this Order. When the Action has been terminated, a  
14 Receiving Party must comply with the provisions of section 13 below (FINAL  
15 DISPOSITION).

16           Protected Material must be stored and maintained by a Receiving Party at a  
17 location and in a secure manner that ensures that access is limited to the persons  
18 authorized under this Order.

19           7.2     Disclosure of "AIRBNB CONFIDENTIAL" Information or Items.  
20 Unless otherwise ordered by the court or permitted in writing by Airbnb, a  
21 Receiving Party may disclose any information or item designated "AIRBNB  
22 CONFIDENTIAL" only for the purpose of service of process on the Doe  
23 defendants in this action, except that the Receiving Party may also disclose the  
24 names and addresses of the Doe defendants for the purpose of amending its  
25 pleadings in this action, and only to:

- 26           (a)     the Receiving Party's Outside Counsel of Record in this Action, as  
27                   well as employees of said Outside Counsel of Record to whom it is  
28                   reasonably necessary to disclose the information for the purpose of

1 service of process on the Doe defendants in this action;

2 (b) process servers;

3 (c) the court and its personnel;

4 (d) court reporters and their staff;

5 (e) during their depositions, witnesses, and attorneys for witnesses, in the

6 Action to whom disclosure is reasonably necessary provided: (i) the

7 deposing party requests that the witness sign the “Acknowledgment

8 and Agreement to Be Bound;” and (ii) they will not be permitted to

9 keep any confidential information unless they sign the

10 “Acknowledgment and Agreement to Be Bound,” unless otherwise

11 agreed by the Designating Party or ordered by the Court. Pages of

12 transcribed deposition testimony or exhibits to depositions that reveal

13 Protected Material may be separately bound by the court reporter and

14 may not be disclosed to anyone except as permitted under this

15 Stipulated Protective Order; and

16 (f) any mediator or settlement officer, and their supporting personnel,

17 mutually agreed upon by any of the parties engaged in settlement

18 discussions.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
 20 OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation  
 22 that compels disclosure of any information or items designated in this Action as  
 23 “AIRBNB CONFIDENTIAL,” that Party must:

24 (a) promptly notify Airbnb in writing. Such notification shall include a  
 25 copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order  
 27 to issue in the other litigation that some or all of the material covered  
 28 by the subpoena or order is subject to this Protective Order. Such



1 notification shall include a copy of this Stipulated Protective Order;  
2 and

3 (c) cooperate with respect to all reasonable procedures sought to be  
4 pursued by Airbnb.

5 If Airbnb timely seeks a protective order, the Party served with the subpoena  
6 or court order shall not produce any information designated in this action as  
7 “AIRBNB CONFIDENTIAL” before a determination by the court from which the  
8 subpoena or order issued, unless the Party has obtained Airbnb’s permission.  
9 Airbnb shall bear the burden and expense of seeking protection in that court of its  
10 confidential material and nothing in these provisions should be construed as  
11 authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
12 directive from another court.

13  
14 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify  
18 Airbnb in writing of the unauthorized disclosures, (b) use its best efforts to retrieve  
19 all unauthorized copies of the Protected Material, (c) inform the person or persons  
20 to whom unauthorized disclosures were made of all the terms of this Order, and (d)  
21 request such person or persons to execute the “Acknowledgment and Agreement to  
22 Be Bound” that is attached hereto as Exhibit A.

23 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
24 PROTECTED MATERIAL

25 When Airbnb gives notice to Receiving Parties that certain inadvertently  
26 produced material is subject to a claim of privilege or other protection, the  
27 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
28 Procedure 26(b)(5)(B).

1 11. MISCELLANEOUS

2 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
3 person to seek its modification by the Court in the future.

4 11.2 Right to Assert Other Objections. By stipulating to the entry of this  
5 Protective Order, Airbnb does not waive any right it otherwise would have to object  
6 to disclosing or producing any information or item on any ground not addressed in  
7 this Stipulated Protective Order. Similarly, Airbnb does not waive any right to  
8 object on any ground to use in evidence of any of the material covered by this  
9 Protective Order.

10 11.3 Other Use of Protected Material. Except as necessary for service of  
11 process on the Doe defendants in this action, or in the limited case of amending its  
12 pleadings, Plaintiff agrees that it will not use or disclose material produced by  
13 Airbnb pursuant to this Protective Order, in this action or for any other action or  
14 purpose whatsoever. Should Plaintiff need to file material covered by this  
15 Protective Order with the court in order to effect service of process on the Doe  
16 defendants, Plaintiff will seek to file that Protected Material Under Seal pursuant to  
17 Section 11.4.

18 11.4 Filing Protective Material - A Party that seeks to file under seal any  
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
20 may only be filed under seal pursuant to a court order authorizing the sealing of the  
21 specific Protected Material at issue. If a Party's request to file Protected Material  
22 under seal is denied by the Court, then the Receiving Party may file the information  
23 in the public record unless otherwise instructed by the Court.

24 12. FINAL DISPOSITION

25 Within 60 days after the final disposition of this Action, as defined in  
26 paragraph 4, each Receiving Party must return all Protected Material to Airbnb or  
27 destroy such material. As used in this subdivision, "all Protected Material" includes  
28 all copies, abstracts, compilations, summaries, and any other format reproducing or

1 capturing any of the Protected Material. Whether the Protected Material is returned  
2 or destroyed, the Receiving Party must submit a written certification to Airbnb by  
3 the 60 day deadline that (1) identifies (by category, where appropriate) all the  
4 Protected Material that was returned or destroyed and (2) affirms that the Receiving  
5 Party has not retained any copies, abstracts, compilations, summaries or any other  
6 format reproducing or capturing any of the Protected Material. Notwithstanding this  
7 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
8 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
9 deposition and trial exhibits, expert reports, attorney work product, and consultant  
10 and expert work product, even if such materials contain Protected Material. Any  
11 such archival copies that contain or constitute Protected Material remain subject to  
12 this Protective Order as set forth in Section 4 (DURATION).

13 13. Any violation of this Order may be punished by any and all  
14 appropriate measures including, without limitation, contempt proceedings and/or  
15 monetary sanctions.

16 ///

17 ///

18 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 Dated: November 21, 2023

MORGAN, LEWIS & BOCKIUS LLP

4  
5 By: /s/ Lindsey M. Shinn  
6 Lindsey M. Shinn  
7 Attorneys for Airbnb, Inc.

8 Dated: November 21, 2023

DONIGER / BURROUGHS

9  
10 By: /s/ Frank R. Trechsel  
11 Frank R. Trechsel  
12 Attorneys for Plaintiff  
13 William Benton Henry

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15  
16 DATED: November 21, 2023

17  
18 / s / Sagar  
19 Honorable Alka Sagar  
20 United States Magistrate Judge  
21  
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26  
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28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
[print or type full address],  
declare under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order that was issued by the United States District Court for  
the Central District of California on [date] in the case of WILLIAM BENTON  
HENRY v. AIRBNB, INC., et al. 2:23-cv-03008-GW(ASx). I agree to comply  
with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Central District of California for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action. I hereby appoint \_\_\_\_\_ [print  
or type full name] of \_\_\_\_\_  
[print or type full address and telephone number] as my California agent for  
service of process in connection with this action or any proceedings related to  
enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_